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REMARKS

Claims 1, 3-10, 12, 14-17, 21-25, and 31-39 are pending in the present application. Reconsideration of the claims is respectfully requested.

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I. 35 U.S.C. § 103, Obviousness

The Office Action rejects claims 1, 3-5, 8-9, 12, 14-17, 21-25, and 31-39 under 35 U.S.C. § 103 as being unpatentable over Kauffman et al. (US Patent No. 5,857,203), hereinafter referred to as "*Kauffman*" in view of Averbuch et al. (US Patent No. 5,689,825), hereinafter referred to as "*Averbuch*." This rejection is respectfully traversed.

With respect to claim 1, the Office Action states:

As per claim 1, Kauffman teaches a method of downloading a file, consisting of components, from a server to a client, comprising the steps of:

receiving from a server a profile [piece map] of the download file;
initiating a download sequence by which each component file is transferred and reassembling the component files into the download file using the profile [col.11 lines 14-29].

Kauffman does not specifically disclose the client and server being and Internet client and an Internet server using an Internet protocol. However, applicant defines (on page 25 of the specification) an Internet client and Internet server as any type of computers or components connected to any type of network. Hence, the client and server of Kauffman read on the Internet client, Internet server as claimed.

It would have been obvious for one of the ordinary skill in the art to use Internet protocol (e.g. FTP) because it is widely available, standard reliable protocol for transferring files.

Kauffman does not specifically disclose what happened when download is interrupted. Averbuch teaches a method for transferring file sequences wherein upon interruption of the download sequence, restarting the download at the component affected by the interruption [col.6 lines 20-29]. The component transferred prior to the interruption is not re-transferred [col.6 line 29]. Hence, it would have been obvious for one of ordinary skill in the art to combine the teaching of Averbuch with the system of Kauffman because it would have improve the efficiency of the downloading.

Office Action, dated 10 October 2001. Applicant respectfully disagrees. *Kauffman* teaches an object library in which large files are divided into smaller pieces, which are themselves files, and creates a piece map identifying those pieces. *Kauffman*, col. 6, lines

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34-39. When a client performs a retrieve function on one of the large files, the server downloads the piece map. The client then decodes the piece map and downloads the individual pieces to reconstitute the large file. *Kauffman*, col. 10, line 58, to col. 11, line 28. *Kauffman* does not teach or suggest, when a download sequence is interrupted, restarting the download sequence with the piece affected by the interruption, as specifically recited in claim 1.

Averbuch teaches a method and apparatus for downloading updated software to portable wireless communication units. The method of *Averbuch* determines download session parameters including a block size and a number of blocks to be transferred. These parameters are downloaded to and stored in the client. *Averbuch* states, “[w]ith knowledge of the size of the original data transfer, the block size, and the remaining number of blocks to be transferred, the data transfer may continue from where it was left off.” *Averbuch*, col. 6, lines 24-27. *Averbuch* teaches continuing data transfer of a single file if the transfer is interrupted. However, *Averbuch* provides no teaching or suggestion regarding downloading a plurality of piece files. At best, *Averbuch* teaches what to do if data transfer of a single piece file is interrupted.

Furthermore, *Averbuch* actually teaches away from the presently claimed invention since *Averbuch* directs one to downloading blocks with a fixed block size rather than dividing the file into pieces, as in the claimed invention. See *In re Hedges*, 228 U.S.P.Q. 685 (Fed. Cir. 1986). Thus, one of ordinary skill in the art would not be motivated to make the changes proposed by the Office Action.

The present invention recognizes the disadvantage of using file transfer protocol (FTP) for download of large files using a device that is likely to be interrupted during download. *Kauffman* does not teach the problem or its source. Instead, *Kauffman* is directed towards storage of large files in particular file systems. However, *Averbuch* does teach the problem, but offers a very different solution. *Averbuch* actually teaches transferring the file in fixed data blocks and tracking the number of blocks remaining. This solution is very different from the invention recited in claim 1 and would not lead a person of ordinary skill in the art to make the proposed combination. Therefore, one of ordinary skill in the art would not be motivated to combine or modify the references in

the manner required to form the solution disclosed in the claimed invention.

The present invention is directed towards dividing a download file into a plurality of component files and, when a download sequence is interrupted, restarting the download sequence with the piece affected by the interruption. Even if *Kauffman* and *Averbuch* could be properly combined, the combination would not form the invention recited in claim 1. Instead, a combination of *Kauffman* and *Averbuch* would result in a method for downloading a file, in which the file is divided into a plurality of piece files that, once downloaded, may be used to reconstitute the document file and, when transfer of one of the piece files is interrupted, the number of blocks remaining is used to restart the transfer of the piece file.

Moreover, the Office Action may not use the claimed invention as an "instruction manual" or "template" to piece together the teachings of the prior art so that the invention is rendered obvious. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). Such reliance is an impermissible use of hindsight with the benefit of applicant's disclosure. *Id.* Therefore, absent some teaching, suggestion, or incentive in the prior art, *Kauffman* and *Averbuch* cannot be properly combined to form the claimed invention. The presently claimed invention can be reached only through the an impermissible use of hindsight with the benefit of applicant's disclosure a model for the needed changes.

Since claims 3-5 and 32 depend from claim 1, the same distinctions between *Kauffman* and *Averbuch* and the invention recited in claim 1 apply for these claims. Claims 8-9, 12, 14-17, 21-25, and 33-39 are allowable for the reasons stated above with respect to claim 1. Additionally, claims 3-5, 8-9, 12, 14-17, 21-25, and 33-39 recite other additional combinations of features not suggested by the reference.

Particularly, with respect to claim 3, the Office Action states:

As per claim 3, since Kauffman's download file comprises plural component files, it is inherent that only the affected component file is restarted. It would have been obvious for one of ordinary skill in the art not to re-transmit completed component files prior to the interruption so as to conserve time and bandwidth.

Office Action, dated 10 October 2001. The Office Action misapplies the concept of "inherency." Under the principles of inherency, a claim is anticipated if a structure in the

prior art necessarily functions in accordance with the limitations of a process or method claim. *In re King*, 801 F.2d 1324, 231 U.S.P.Q. 136 (Fed. Cir. 1986). Neither *Kauffman* nor *Averbuch* teaches or suggests that, in the case of an interruption, the download starts with the affected component file. Clearly, even if one were to combine *Kauffman* and *Averbuch*, an interrupted download could restart with any component file. More likely, when a download sequence is interrupted, the client may start from scratch by downloading the piece map and downloading every piece file identified in the piece map. Regardless, the Office Action proffers no reasoning as to why, in a combination of *Kauffman* and *Averbuch*, an interrupted download must **necessarily** restart with the affected file.

The Office Action offers a motivation of conservation of time and bandwidth to support the proposed modification to the applied art. The Office Action may not make modifications to the prior art using the claimed invention as a model for the modifications. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780, 1783-1784 (Fed. Cir. 1992). "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art has suggested the desirability of the modification." *Id.* In other words, unless some teaching exists in the prior art for the suggested modification, merely asserting that such a modification would be obvious to one of ordinary skill in the art is improper and cannot be used to meet the burden of establishing a *prima facie* cases of obviousness. Such reliance is an impermissible use of hindsight with the benefit of applicant's disclosure.

Also, with respect to claims 32-39, the Office Action states:

As per claims 32-39, it is inherent that the system as modified would used the profile to continue the download in order to identify with component files are to be request from the server.

Office Action, dated 10 October 2001. Again, the Office Action misapplies the concept of "inherency." One can assume that, in the system of *Kauffman*, as allegedly combined with *Averbuch*, when a download sequence is interrupted, the client may start from scratch by downloading the piece map and downloading every piece file identified in the piece map. Regardless, the Office Action proffers no reasoning as to why, in a combination of *Kauffman* and *Averbuch*, an interrupted download must **necessarily**

restart with the affected file or use the profile to continue the download. As stated above, *Averbuch* teaches transferring a download file in fixed data blocks, tracking the number of blocks remaining, and continuing data transfer of a single file if the transfer is interrupted. This solution is very different from the invention recited in claims 32-39, wherein the **profile** is used to restart a **download sequence**.

Therefore, the rejection of claims 1, 3-5, 8-9, 12, 14-17, 21-25, and 31-39 under 35 U.S.C. § 103 is overcome.

The Office Action rejects claims 6-7, 10, and 16 under 35 U.S.C. § 103 as being unpatentable over *Kauffman* in view of *Averbuch* and further in view of *Pyne* (US Patent No. 5,446,888). This rejection is respectfully traversed.

With respect to claims 6-7, 10, and 16, the Office Action states:

As per claims 6-7, 10, 16, *Kauffman* does not specifically disclose using CRC for identifying file component and verifying the component file integrity. The use of CRC to identify and verify file integrity is well known in the art. *Pyne* teaches a remote file transfer method using CRC to identify and check the integrity of the file [see col.7 lines 50-64]. It would have been obvious for one of ordinary skill in the art use CRC as identifier for the component file because it would have improved the reliability of the system by enabling the client to identify and check the integrity of downloaded component files.

Office Action, dated 10 October 2001. Applicant respectfully disagrees. *Pyne* teaches the use of CRC for checking file integrity. However, the prior art fails to teach or suggest CRC codes in identifying information for each component file of a download file in a profile, which is received before initiating a download of the component files. More specifically, no suggestion to modify the combination of *Kauffman* and *Averbuch* to include such a combination of features has been shown in the Office Action. Instead, *Pyne* teaches a single file rather than a plurality of component files. Furthermore, *Pyne* teaches computing key values at the receiving computer and transferring the key values to the source computer. See col. 4, lines 41-51. Thus, *Pyne* does not teach including CRC values in a profile.

The present invention is directed towards dividing a download file into a plurality of component files and, when a download sequence is interrupted, restarting the download sequence with the piece affected by the interruption. Even if *Kauffman*,

Averbuch, and *Pyne* could be properly combined, the combination would not form the invention recited in claims 6-7, 10, and 16. Instead, a combination of *Kauffman*, *Averbuch*, and *Pyne* would result in a method for downloading a file, in which the file is divided into a plurality of piece files that, once downloaded, may be used to reconstitute the document file and, when transfer of one of the piece files is interrupted, the number of blocks remaining is used to restart the transfer of the piece file, and if a destination file corresponding to the source file already exists on the client computer, the client computer may download only blocks that have changed.

Therefore, the rejection of claims 6-7, 10, and 16 under 35 U.S.C. § 103 is overcome.

II. Conclusion

It is respectfully urged that the subject application is patentable over *Kauffman*, *Averbuch*, and *Pyne* and is now in condition for allowance.

The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,



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